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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,083	02/19/2004	Bindu Rama Rao	14914US02	4770
23446 7590 02/04/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			EXAMINER WON, MICHAEL YOUNG	
			ART UNIT 2155	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,083

Applicant(s)

RAO, BINDU RAMA

Examiner

Michael Y. Won

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/2/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the application filed February 19, 2004.
2. Claims 1-44 have been examined and are pending with this action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 13, 19, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. The term "gracefully" is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-6, 8-11, 19-31, 35-36, 38, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) in view of Peart (US 6,952,714).

INDEPENDENT:

As per **claim 1**, Boivie teaches a method of gracefully managing incoming access requests during an update event from a plurality of electronic devices in a communication network, each of the incoming access requests comprising at least one update-related parameter, the method comprising:

receiving each incoming access request at least temporarily (see col.5, lines 20-21: "requests arrive at a Communication Bandwidth Manager (CBM) 110");

determining the availability of at least one device server to process the incoming access requests (see col.5, lines 25-28: "selects on of the servers 101");

immediately processing incoming access requests upon determining that the at least one device server is available (see col.5, lines 29-31: "The selected server receives the Web request, services it... "); and

communicating at least one message to electronic devices requesting access upon determining that the at least one device server is unavailable (see col.6, lines 47-50: "return a message to the Web client 130 that the server complex is overloaded").

Boivie does not explicitly teach monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter.

Peart teaches monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter (see col.29, lines 55-58: "request typically includes parameters that identifies the selected data file on the web server").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced.

As per **claim 19**, Boivie teaches an electronic device network adapted to gracefully manage incoming access requests during an update event, each of the incoming access requests comprising at least one update-related parameter, the electronic device network comprising:

at least one electronic device having one of software and firmware, the electronic device being adapted to be communicatively coupled to the electronic device network (see Fig.1);

an access control unit (see Fig.3 and col.7, lines 1-7);

at least one device server operatively coupled to the access control unit (see Fig.1); and

a memory operatively coupled to the at least one device server (see col.5, lines 44-47), wherein the access control unit is adapted to immediately process and manage incoming information access requests from the at least one electronic device (see col.25-28 and col.7, lines 10-17: "... and determines the server node 011 to service the request").

Boivie does not explicitly teach that the electronic device is a mobile device.

Peart teaches of a mobile device (see col.4, lines 29-32: "wireless device")

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 42**, Boivie teaches a method of gracefully managing incoming access requests during an update event from a plurality of electronic devices in a communication network, each of the incoming access requests comprising at least one selection-related parameter, the method comprising:

receiving each incoming access request at least temporarily (see col.5, lines 20-21: "requests arrive at a Communication Bandwidth Manager (CBM) 110");

determining whether the incoming access requests is able to be processed (see col.5, lines 25-28: "selects on of the servers 101");

immediately processing incoming access requests upon determining that processing the incoming access request is likely to be successful (see col.5, lines 29-31: "The selected server receives the Web request, services it... "); and

communicating at least one message to the electronic device requesting access upon determining that processing the incoming access request is unlikely to be successful (see col.6, lines 47-50: "return a message to the Web client 130 that the server complex is overloaded").

Boivie does not explicitly teach monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter.

Peart teaches monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter (see col.29, lines 55-58: "request typically includes parameters that identifies the selected data file on the web server").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced.

DEPENDENT:

As per **claim 3**, which depends on claim 1, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

As per **claim 4**, which depends on claim 1, Boivie further teaches wherein the at least one message comprises a denial of service message (see col.6, lines 47-56).

As per **claim 5**, which depends on claim 4, Boivie further teaches wherein the denial of service message comprises at least one reason for service denial (see col.6, lines 47-56).

As per **claim 6**, which depends on claim 1, Boivie further teaches wherein determining the availability of the at least one device server to process the incoming access requests comprises evaluating at least one of an expected volume of requests, collected statistical information, user profile, request profile, and heuristics (see col.7, lines 10-17).

As per **claim 8**, which depends on claim 1, Boivie further teaches wherein monitoring and evaluating the incoming access requests further comprises periodically retrieving a status information communication from one of the at least one device server and at least one of the plurality of electronic devices (see col.6, lines 15-19).

As per **claim 9**, which depends on claim 1, Boivie further teaches wherein monitoring and evaluating the incoming access requests further comprises monitoring at least one network resource, operational status of the at least one device server, a

volume of incoming access requests, and information regarding at least one of the plurality of electronic devices (see col.6, line 15-19).

As per **claim 10**, which depends on claim 1, Boivie teaches comprising selecting a candidate device server to process an incoming access request based upon monitored information regarding the at least one device server (see col.6, lines 20-32).

As per **claims 11 and 20**, which respectively depend on claims 1 and 20, Boivie does not explicitly teach wherein the at least one electronic device comprises a plurality of mobile electronic devices, and wherein the plurality of mobile electronic devices comprise at least one of a mobile cellular phone handset, personal digital assistant, pager, MP3 player, and a digital camera.

Peart teaches of a mobile device (see col.4, lines 29-32: "wireless device")

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 21**, which depends on claim 19, Boivie does not explicitly teach wherein the at least one device server comprises a plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices.

Peart teaches a plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices (see col.21, lines 20-24).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing a

plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices. One would be motivated to do so because software updates are one or plurality of services provided by Web server.

As per **claim 22**, which depends on claim 19, Boivie further teaches wherein the access control unit is adapted to determine an incoming access request volume at the at least one device server and ability of the at least one device server to service additional incoming access requests (see col.5, lines 22-28).

As per **claim 23**, which depends on claim 19, Boivie further teaches further comprising a monitoring unit adapted to monitor activity of the at least one device server (see col.6, lines 20-32).

As per **claim 24**, which depends on claim 19, although Boivie further teaches a memory, Boivie does not explicitly teach comprising a plurality of updates retrievable by the at least one device server.

Peart teaches a plurality of updates retrievable by the at least one device server (see col.21, lines 20-24).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing a plurality of updates retrievable by the at least one device server. One would be motivated to do so because software updates are one or plurality of services provided by Web server.

As per **claim 25**, which depends on claim 19, Peart further teaches wherein the at least one mobile electronic device comprises random access memory and non-

volatile memory, and wherein the non-volatile memory comprises at least one of an update application loader, update agent, download agent, and an operating system (inherency).

As per **claim 26**, which depends on claim 19, Boivie further teaches wherein an incoming access request comprises at least one of device identification information, firmware identification information, software version information, and resource availability information (see col.4, lines 42-44).

As per **claim 27**, which depends on claim 19, Boivie further teaches wherein the access control unit is adapted to determine priority of an incoming access request by recognizing that the incoming access request is one of a repeated and rescheduled access request (see col.4, lines 40-41).

As per **claim 28**, which depends on claim 19, Boivie further teaches wherein the access control unit is adapted to determine one of whether a particular incoming access request requires immediate processing, whether the incoming access request requires deferment, and whether the incoming access request requires denial based upon operational status information gathered by monitoring the at least one device server and by evaluating the incoming access request (see col.5, lines 44-57).

As per **claim 29**, which depends on claim 28, Boivie further teaches wherein upon determining that the incoming access request requires denial, the access control unit communicates at least one message to the mobile electronic device (see col.6, lines 47-56).

As per **claim 30**, which depends on claim 29, Boivie further teaches wherein the at least one message to the mobile electronic device comprises a denial of service message (see col.6, lines 47-56).

As per **claim 31**, which depends on claim 29, Boivie further teaches wherein the at least one message to the mobile electronic device comprises at least one reason for service denial (see col.6, lines 47-56).

As per **claim 35**, which depends on claim 29, Boivie further teaches wherein a rescheduled request is rapidly advanced in the processing queue (see col.4, lines 40-41).

As per **claim 36**, which depends on claim 28, Boivie further teaches wherein upon determining that the incoming access request requires denial, a denial of service message is displayed at the mobile electronic device (see col.6, lines 47-56).

As per **claim 38**, which depends on claim 27, Boivie further teaches wherein the access control unit is adapted to at least briefly accept all incoming communications (implicit: see col.6, lines 8-11).

As per **claim 40**, which depends on claim 19, Boivie and Peart further teach wherein the mobile electronic devices are adapted to one of: repeat denied access requests without end-user intervention (see col.6, lines 63-64); prompt an end-user to initiate repeated access requests; display alternative schedules communicated to the mobile electronic device; prompt the end-user to select a particular alternative schedule; and autonomously repeat the access request according to a selected alternative schedule.

As per **claim 41**, which depends on claim 19, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

As per **claim 43**, which depends on claim 42, Boivie further teaches wherein the at least one message communicated to electronic device comprises schedule information useable by the electronic device to re-attempt access employing another incoming access request (see col.6, lines 63-64).

5. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) in view of Vogl et al. (US 6,959,327).

As per **claim 13**, Boivie teaches a method of gracefully managing incoming access requests during an update event from a plurality of electronic devices in a mobile electronic network, the method comprising:

recognizing that an incoming access request is a access request (see col.5, lines 20-28); and

fulfilling the access request with higher priority than an original request (subjective: see col.4, lines 40-41: "incoming requests are served by priority").

Boivie does not explicitly teach evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter and wherein the request is a rescheduled access request.

Vogl teaches evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter (see Fig.7 and col.15, line 63- col.16, line 2: "which instructs the schedule architecture 800 to retrieve...") and wherein the request is a rescheduled access request (see col.15, lines 17-22).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Vogl by implementing evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter and wherein the request is a rescheduled access request. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced and allow requests to be received when system can efficiently handle the request.

As per **claim 14**, which depends on claim 13, Boivie further teaches wherein the rescheduled access request is an incoming access request that was previously denied (see col.47-56).

As per **claim 15**, which depends on claim 13, Boivie further teaches wherein fulfilling the rescheduled access request with higher priority than an original request comprises advancing the rescheduled request in a processing queue (see col.6, lines 40-41).

As per **claim 16**, which depends on claim 13, Boivie further teaches wherein fulfilling the rescheduled access request with higher priority than an original request

comprises immediately placing the rescheduled request in the processing queue (see col.5, lines 44-57).

As per **claim 17**, which depends on claim 13, Boivie does not explicitly teach wherein the at least one mobile electronic device comprises a plurality of electronic devices, and wherein the plurality of electronic devices comprise at least one of a mobile cellular phone handset, personal digital assistant, pager, MP3 player, and a digital camera.

Vogl teaches of a mobile device (implicit: see col.6, lines 27-33: "wireless networks")

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Vogl so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 18**, which depends on claim 13, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

6. Claims 2, 7, 12, 32-43, 37, 39 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) and Peart (US 6,952,714), and still further in view of Vogl et al. (US 6,959,327).

As per **claim 2**, which depends on claim 1, Boivie and Peart do not explicitly teach wherein communicating comprises determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing, based upon the at least one update-related parameter.

Vogl teaches determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing (see col.3, lines 22-25), based upon the at least one update-related parameter (see Fig.7 and col.15, line 63- col.16, line 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie and Peart in view of Vogl by implementing determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing. One would be motivated to do so because this would notify the electronic device submit a request when system can efficiently handle the request.

As per **claim 7**, which depends on claim 1, Boivie and Peart do not explicitly teach further comprising graceful communication termination, wherein graceful communication termination comprises communicating an alternate schedule to send a rescheduled access request along with an explanatory denial of service message.

Vogl teaches communicating an alternate schedule to send a rescheduled access request along with an explanatory denial of service message (see claim 2 rejection above)

As per **claim 12**, which depends on claim 1, Boivie and Peart do not explicitly teach wherein the at least one message comprises alternate schedule information, wherein the alternate schedule information comprises at least one of a time to re-submit an access request, a particularly time frame for re-submitting an access request, an amount of time that must elapse before re-submitting and access request, and a particular date for re-submitting an access request.

Vogl teaches an alternate schedule information comprises at least one of a time to re-submit an access request, a particularly time frame for re-submitting an access request, an amount of time that must elapse before re-submitting and access request, and a particular date for re-submitting an access request (see claim 2 rejection above).

As per **claim 32**, which depends on claim 29, Boivie and Peart do not explicitly teach wherein upon determining that the incoming access request requires denial, the access control unit is adapted to determine at least one alternate schedule for the mobile electronic device to send a rescheduled access request.

Vogl teaches upon determining that the incoming access request requires denial, the access control unit is adapted to determine at least one alternate schedule for the mobile electronic device to send a rescheduled access request (see claim 2 rejection above).

As per **claim 33**, which depends on claim 29, Boivie and Peart do not explicitly teach wherein upon determining that the incoming access request requires denial, the access control unit is adapted to communicate at least one alternate schedule to the mobile electronic device along with the at least one message.

Vogl teaches upon determining that the incoming access request requires denial, the access control unit is adapted to communicate at least one alternate schedule to the mobile electronic device along with the at least one message (see claim 2 rejection above).

As per **claim 34**, which depends on claim 29, although Boivie and Peart teaches the rescheduled access request is determined to have higher priority than an original incoming access request, and wherein the rescheduled access request is one of immediately placed in the processing queue and advanced in the processing queue (subjective see claim 13 rejection above), Boivie and Peart do not explicitly teach wherein a rescheduled access request is an incoming access request that was previously denied service.

Vogl teaches wherein a rescheduled access request is an incoming access request that was previously denied service (see claim 2 rejection above).

As per **claim 37**, which depends on claim 28, Boivie and Peart does not explicitly teach wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed and an explanatory message is displayed at the mobile electronic device.

Vogl teaches wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed (see col.3, lines 9-10) and an explanatory message is displayed at the mobile electronic device (see col.7, lines 19-23).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie and Peart in view of Vogl by implementing wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed and an explanatory message is displayed at the mobile electronic device. One would be motivated to do so because Boivie teaches that by default browsers will retransmit requests when the browser cannot obtain a response. Therefore, by implementing such means, the control is given to the user and/or electronic device.

As per **claim 39**, which depends on claim 19, although Boivie and Peart teach further comprising a monitoring unit, the monitoring unit being adapted to gracefully manage denial of service for incoming access requests by: monitoring a volume of incoming access requests (see col.5, lines 22-28); determining device server availability (see col.6, lines 47-56); and providing monitored information to the access control unit (see col.6, lines 1-19), Boivie and Peart do not teach determining alternative schedules for mobile electronic devices to re-attempt access requests; and communicating the alternative schedules to the mobile electronic devices.

Vogl teaches determining alternative schedules for mobile electronic devices to re-attempt access requests; and communicating the alternative schedules to the mobile electronic devices (see claim 2 rejection above).

As per **claim 44**, which depends on claim 42, Boivie and Peart does not explicitly teach wherein the at least one message communicated to electronic device comprises a schedule information indicating a time when the communication network is likely to be able to provide one of requested information and data to the electronic device.

Vogl teaches wherein the at least one message communicated to electronic device comprises a schedule information indicating a time when the communication network is likely to be able to provide one of requested information and data to the electronic device (see claim 2 rejection above).

Conclusion

7. For the reasons above, claims 1-44 have been rejected and remain pending.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Michael Won/

Primary Examiner

January 24, 2008